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Feds Defer to California's State Law Eliminating Surprise Medical Bills

When Congress enacted the "No Surprises Act" (PL 116-260), it recognized that a number of states had already enacted laws to protect patients from surprise medical bills, and Congress agreed to defer to these state laws in certain circumstances. Accordingly, California's Department of Managed Health Care (DMHC) recently issued guidance in the form of an "All Plan Letter" (APL 22-011) indicating that California's Knox-Keene Act and California's state law (AB 72) eliminating surprise medical bills will control over the provisions of the federal No Surprises Act (NSA).

Specifically, California's guidance provides an overview of the applicability of California law with respect to patient cost-sharing, provider reimbursement, and dispute resolution in three scenarios: (1) when non-emergency services are provided by an out-of-network provider at an in-network facility; (2) when emergency services are provided by an

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out-of-network provider; and (3) when air ambulance services are provided by an out-of-network provider.

California's AB 72 prohibits out-of-network providers from collecting from a patient more than the in-network cost-sharing amount for non-emergency covered services rendered at an in-network facility. In addition, AB 72 provides that the patient's health plan must reimburse out-of-network providers an amount equal to the average contracted rate (ACR), or 125 percent of the Medicare reimbursement rate, whichever is greater. Moreover, AB 72 defines in-network facilities more broadly than the NSA. The NSA applies only to hospitals and ambulatory surgery centers. AB 72 includes not only hospitals and ambulatory surgery centers, but also laboratories, radiology or imaging centers, and other outpatient settings.

California's Knox-Keene Act prohibits health plans and providers from balance billing patients for out-of-network emergency services, including post-stabilization care. Therefore, for out-of-network emergency services, DMHC-licensed health plans must continue to comply with the Knox-Keene Act regarding patient cost-sharing, provider reimbursement, and the resolution of disputes between health plans and providers.

The Knox-Keene Act similarly prohibits billing for out-of-network air ambulance services, limiting a patient's financial liability to the in-network cost-sharing amount. However, the federal Airline Deregulation Act preempts state laws regulating the "rates, routes, and services of any carrier," including air ambulance providers. Consequently, health plans must follow the federal NSA and its implementing regulations when calculating reimbursement amounts for out-of-network air ambulance providers. The patient's cost-sharing must be based on the lesser of the reimbursement amount dictated by the NSA or the amount the provider billed.

Full text of All Plan Letter (APL 22-011, California Department of Managed Health Care, March 21, 2022)

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